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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-5852

HORTON C. WEISS, *Petitioner*,

v.

WALDON V. BURR, Sheriff of Pima County Arizona, *Respondent*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

THE STATE OF ARIZONA
By **GARY K. NELSON**
The Attorney General

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Counsel for Respondent

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OPINIONS BELOW

The opinion of the District Court (App. B to Petition) is reported at 327 F. Supp. 1306 (1971). The opinion of the Court of Appeals for the Ninth Circuit (App. A to Petition) is as yet unreported.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on May 21, 1973, and a timely petition for

rehearing was denied on September 18, 1973 (App. C to Petition). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

1. This is a case in which a prosecuting attorney in a state proceedings was found to have committed several contempts in the course of an overzealous prosecution. The state trial judge found that the prosecutor saw his case going badly and attempted to force a mistrial by outrageous conduct and disobedience to the judge's orders. The state trial judge fined the prosecutor $150 on one count and ordered imprisonment for a total of fifteen days. The State Supreme Court affirmed.

2. On petition for habeas corpus, the court below found procedural errors as to two of the counts, the practical effect of which was to reduce the penalty to $150 and a total of three days in prison. The State of Arizona has not cross-petitioned because, while this matter is pending, it has adopted different rules of criminal procedure so that the problems are unlikely to reoccur.

REASONS FOR DENYING THE WRIT

So far, thirteen state and federal judges have passed on this matter and no one has the slightest doubt that petitioner was in contempt. What is left of the matter is purely factual.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

THE STATE OF ARIZONA
By GARY K. NELSON
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December, 1973